co-workers who had not yet been discharged would eliminate the distinction between [the] economic-striker-reinstatement rule (*Mackay Radio & Telegraph*) and the unfair-labor-practice-striker-reinstatement rule (*Mastro Plastics*) in cases like this one." 448 F. 2d 905, 911–912.

Consistent with its determination that the discharged employees were economic strikers entitled to reinstatement only if the employer could not show legitimate and substantial business justifications for refusing to take them back, the Court of Appeals remanded the case for further findings concerning the reasons for the employer's refusal to rehire them. 448 F. 2d 905, 912. Because this decision appeared to involve principles important to the administration of the National Labor Relations Act as amended, we granted the Board's petition for certiorari, 405 U. S. 953.

Both the Board and the Court of Appeals have agreed that the labor picketing was a lawful economic strike, and the validity of that conclusion is not before us.[4] Given that hypothesis, the Board and the Court of Appeals were clearly correct in concluding that the respondent committed unfair labor practices when it fired its striking employees. "[T]he discharge of economic strikers prior . . . to the time their places are filled constitutes an unfair labor practice." *NLRB* v. *Globe Wire-*

[4] The Court of Appeals construed the picketing as a strike for the purpose of forcing the respondent employer to agree to a consent election, 448 F. 2d 905, 910, and held this to be protected under the Act. The respondent disagrees. But since no timely cross-petition for certiorari was filed by the respondents, this question is not before us. *Alaska Industrial Board* v. *Chugach Electric Assn.*, 356 U. S. 320, 325; *NLRB* v. *Express Publishing Co.*, 312 U. S. 426, 431–432; *Morley Construction Co.* v. *Maryland Casualty Co.*, 300 U. S. 185, 191. We therefore proceed on the premise that the union was engaged in protected activity, while intimating no view on the merits of this portion of the decision of the Court of Appeals.

less, 193 F. 2d 748, 750; *NLRB* v. *Comfort, Inc.*, 365 F. 2d 867, 874; *NLRB* v. *McCatron*, 216 F. 2d 212, 215. We need not decide, however, whether the Board was correct in determining that the discharged employees assumed the status of unfair labor practice strikers on October 5, 1971, to reach the conclusion that the Court of Appeals erred in refusing to enforce the Board's order of reinstatement with back pay.

Unconditional reinstatement of the discharged employees was proper for the simple reason that they were the victims of a plain unfair labor practice by their employer. Quite apart from any characterization of the strike that continued after the wrongful discharges occurred, the discharges *themselves* were a sufficient ground for the Board's reinstatement order. "Reinstatement is the conventional correction for discriminatory discharges," *Phelps Dodge Corp.* v. *NLRB*, 313 U. S. 177, 187, and was clearly within the Board's authority. 29 U. S. C. § 160 (c).

It would undercut the remedial powers of the Board with respect to § 8 violations, and subvert the protection of § 7 of the Act, to hold that the employees' rights to reinstatement arising from the discriminatory discharges were somehow forfeited merely because they continued for a time to engage in their lawful strike after the unfair labor practices had been committed.

The judgment of the Court of Appeals is reversed insofar as it refused to enforce the Board's order that the discharged employees be reinstated with back pay.[8]

It is so ordered.

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[8] The Court of Appeals remanded to the Board for a determination of whether Casillas had actually been denied employment subsequent to his request for reinstatement, and did not reach the propriety of the bargaining order entered by the Board. We leave these aspects of the Court of Appeals decision undisturbed.

SUPREME COURT OF THE UNITED STATES

No. 71-895

National Labor Relations Board, Petitioner, *v.* International Van Lines.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[November 7, 1972]

MR. JUSTICE BLACKMUN, concurring in the judgment.

The result mandated by the narrow factual situation presented in this case need not be automatically imposed whenever an economic striker is discharged before being permanently replaced. Although the Court's opinion speaks only of permanent replacement as a justification for refusal to reinstate an economic striker, the Court has recognized in the past that, in addition to permanent replacement, other "legitimate and substantial business justifications" for not reinstating an economic striker may exist. *NLRB* v. *Fleetwood Trailer Co.*, 389 U. S. 375, 378–380 (1967). The Court is not faced in the present case with other "legitimate and substantial business justifications" because the employer, who bears the burden of proof, asserted only the permanent-replacement justification. The finding of an unfair labor practice here is not to be read, therefore, as necessarily precluding an employer from reliance on appropriate justifications other than permanent replacement.

Since the employer failed to show any business justification arising before the discharges, these workers enjoyed reinstatement rights when they were discriminatorily discharged. I concur in the reversal of the Court of Appeals' judgment because preservation of the rights existing before the workers were discharged is the appropriate remedy to provide "a restoration of the situation, as nearly as possible, to that which would have obtained but for the illegal discrimination." *Phelps Dodge Corp.* v. *NLRB*, 313 U. S. 177, 194 (1941).